IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17439 OF 2005
with
CIVIL APPLICATION NO. 8110 OF 2006
WITH
SPECIAL CIVIL APPLICATION NO. 17440 OF 2005
with
CIVIL APPLICATION NO. 8111 OF 2006
WITH
SPECIAL CIVIL APPLICATION NO. 17441 OF 2005
with
CIVIL APPLICATION NO. 8106 OF 2006
WITH
SPECIAL CIVIL APPLICATION No. 17442 of 2005
with
CIVIL APPLICATION No. 8108 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RACHNA CONSTRUCTION CO - Petitioner(s)
Versus
GUJARAT WATER SUPPLY & SEWERAGE BOARD & 1 - Respondent(s)

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Appearance :

MR GT DAYANI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR MEHUL H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 04/08/2006

COMMON ORAL JUDGMENT

1. Instant batch of four Petitions filed under Article 227 of the Constitution of India is directed against separate but identical order dated 7.5.2005 recorded below application exh.18 in Special Civil Suit Nos. 127 of 2002, 128 of 2002, 129 of 2002 and 130 of 2002, by the learned 2nd Joint Civil Judge (SD), Anand, by which separate application exh.18 filed in each of the Special Civil Suits, by the Respondents / original Defendants – The Gujarat Water Supply & Sewerage Board and another, for hearing the preliminary issue first as the issue of jurisdiction, has been allowed and thereby Plaint in each of the Special Civil Suits has been rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.
2. The Petitioner - M/s Rachna Construction Company / original Plaintiff has filed four separate Civil Suits bearing Nos. 127 of 2002, 128 of 2002, 129 of 2002 and 130 of 2002, in the Court

of learned Civil Judge (SD), Anand against the Respondents for recovery of the amount mentioned in the Suits. The Petitioner was awarded four different works under different contracts by the Respondents. The details of works awarded to the Petitioner and Special Civil Suits filed for recovery of the amount, are mentioned hereinbelow:

Sr. No.	Name of Work	Agreement No.	Special Civil Suit No.	Claim Amount	Special Civil Application No.1
1.	Construction of Pump House Compound Wall, Toe Wall, Thrust Wall etc. for Intake Well at Kolvan, Tal. Balasinor, District Kheda.	B-1/53 of 1998-99	127/ 2002	21,94,250.54	17439 of 2005
2.	Constructing R.C.C.Intake Well, Approach Bridge Area Grading, W.B.M. Road, Pipe Culvert at Villate Namnar.	B-2/35 of 1998-99	128/ 2002	1,08,79,634.22	17440 of 2005
3.	Constructing Intake Water Way in River Mahi Sagar Resoration work at Kolvan, Ta. Balasinor, District Kheda.	B-1/54 of 1998-99	129/ 2002	4,17,545.00	17441 of 2005
4.	Constructing R.C.C. Intake Well, Appraoch Bridge at Kolva, Ta. Balasinor, District Kheda.	B-2/20 of 1998-99	130/ 2002	42,04,625.00	17442 of 2005

3. The Petitioner / original Plaintiff has carried out the aforesaid construction works. However the Respondents did not pay the said amounts.

Therefore, four separate Suits came to be filed at the instance of the Petitioner / original Plaintiff.

4. The Respondents appeared in the Suits and filed written statements. Along with the Suits, application exh. 18 is also moved in each of the Special Civil Suits, praying for hearing the issue of jurisdiction as preliminary issue, as, according to the Respondents, “Intake Well” is included in the definition of “Well” and therefore, Special Tribunal constituted under the Gujarat Works Contracts Disputes Arbitration Tribunal Act, 1992 (“the Act” for short) has jurisdiction to decide the said issue. The learned trial Judge, after hearing the learned advocates appearing for the parties, allowed the application and rejected the Plaint in each of the Special Civil Suits, giving rise to instant batch of four Petitions.

5. The contention of Mr. G.T.Dayani, learned advocate of the Petitioner in the above four Petitions is two fold; (i) that the Court of Civil Judge (SD), Anand is the Court of competent jurisdiction to decide and entertain all the Suits as the nature of work in all above four contracts is pertaining to construction of “Intake Well” and allied works under “Kheroli Regional Water Supply Scheme” and the Tribunal constituted under the Gujarat Works Contacts Disputes Arbitration Tribunal Act, 1992 has no jurisdiction because the construction of “Intake

Well" is not a specified work as defined under Section 2(k) of the Act. From the above definition and also as per the decision of the Arbitration Tribunal in Arbitration Reference No.4 of 2001 decided on 30.4.2001, the above works are pertaining to Intake Well and hence, they are not covered under the definition of Section 2(k) of the Act and therefore, the Arbitration Tribunal has no jurisdiction and it is the Civil Court only has jurisdiction to decide it.

Another contention of Mr. G.T.Dayani, learned advocate of the Petitioner is that, in any case the order passed below application exh.18 is illegal and unsustainable because even if this Court holds that the work "Well" as defined under Section 2(k) of the Act includes the work of construction of "Intake Well", then the order of the trial Court requires to be quashed and set aside and the Suits, which have been filed, are required to be returned to the Petitioner with the direction to present the same before the Gujarat Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad.

He, therefore, urges to allow all the Petitions and thereby to quash and set aside the impugned orders.

6. Mr. Mehul H. Rathod, learned advocate for the Respondents contended that the works entrusted to the Petitioner are very much falling within the definition of specified works as defined

under Section 2(k) of the Act as, according to him, the work of construction of “Well” includes construction of “Intake Well”. More over, according to him, “Well” is to be construed liberally, and therefore, Suits were required to be filed before the Tribunal, which has jurisdiction over the subject matter. It is also contended by him that there is a clause of Arbitration in the agreement, and therefore, the matter should go for the Arbitration.

He, therefore, submitted that all the Petitions lacks merit, as the orders impugned does not call for interference in a Petitions filed under Article 227 of the Constitution of India. He, therefore, urges to dismiss all the Petitions.

7. Notwithstanding the aforesaid submissions advanced by the learned advocates appearing for the parties, they are unanimous that the order below application exh.18 deserves to be quashed and set aside in view of the fact that the trial Court has rejected the Plaint instead of returning it for presentation to the proper Court and, therefore, they urged to pass appropriate orders in view of the consensus arrived at between them.

8. In view of the aforesaid state of affairs, this Court pass the following order.

(i) Separate orders dated 7.5.2005, passed below application exh.18 in Special Civil Suit Nos. 127 of 2002, 128 of 2002, 129 of 2002 and 130 of 2002 by the leaned 2nd Joint Civil Judge (SD),

Anand, are hereby quashed and set aside and instead of rejection of the Plaint, the learned 2nd Joint Civil Judge (SD), Anand is directed to return the Plaint to the Petitioner / original Plaintiff together with its documents, for presenting the same before the Arbitration Tribunal, Ahmedabad and the Arbitration Tribunal, Ahmedabad is directed to treat the same as References. The Petitioner shall present the Suits before the Arbitration Tribunal, Ahmedabad within a period of 15 days after returning of the Plaint to it. The Arbitration Tribunal, Ahmedabad, shall, thereafter, decide all the four References strictly in accordance with law and shall decide all the contentions and counter contentions raised by both the parties.

(ii) The Petitioner is at liberty to file appropriate application before the learned Civil Judge (SD), Anand for refund of the excess Court Fee as under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992, 50% Court Fee of ad-velorem is required to be paid as against the ad-velorem fees already paid in the Suits. The learned Civil Judge (SD), Anand shall pass appropriate order on the application filed by the Petitioner praying to refund the Court Fee, strictly in accordance with law.

9. In view of the aforesaid directions, all the four Special Civil Applications succeed and accordingly they are allowed, with no order as

to costs. Rule is made absolute.

10. Since all the four Special Civil Applications are allowed, Civil Applications filed therein, for early hearing of the Special Civil Applications, now do not assume any survival value, hence the same are also disposed of accordingly.

(A.M.Kapadia,J)

Jayanti*